implementation of no single proposal in the *NPRM* will have a more immediate impact on expediting MDS application processing than this one.

In the initial *Report and Order* in General Docket No. 90-54, the Commission made great strides in expediting the construction of MDS facilities by eliminating rules governing the coordination of proposed facilities with ITFS interests that were "needlessly redundant, time-consuming and expensive."[83] Under the rules promulgated in the *Report and Order*, a MDS applicant was required to demonstrate non-interference to every ITFS applicant or licensee potentially affected by its proposal, and to serve each of them with an interference analysis prior to filing its MDS application. Those ITFS interests were then afforded time to petition to deny should they disagree with the MDS applicant's interference analysis.

In the *Reconsideration Order*, however, the Commission significantly altered Section 21.902 as of December 30, 1991 in a manner that is delaying the licensing of new MDS stations because one group of ITFS interests complained of the burden imposed on them by having to review mutually-exclusive applications submitted under the new coordination procedures rather than just the application of a single lottery winner.

Under the rules adopted in response to that complaint, a MDS applicant cannot serve its interference analyses until the Commission gives public notice that its application is not mutually-exclusive with any other application or, if it is mutually

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[83] *Gen. Docket No. 90-54 R&O*, *supra* note 2, 5 FCC Rcd at 6413.

exclusive, that it has won a lottery. Then, ITFS interests have a remarkably long 120 day period in which to petition to deny. Particularly since it often takes months for the Commission to place an application on public notice, the adverse impact of these new rules on those attempting to develop wireless cable systems is patent.[84]

Certainly, WCA is sympathetic to the plight of any ITFS applicant or licensee that is flooded with mutually-exclusive applications for a single license. WCA submits, however, that if the rules proposed in the *NPRM* to deter speculative filings are adopted by the Commission, there will be virtually no mutually exclusive applications, and the need for the revisions adopted in the *Reconsideration Order* will evaporate.

For these reasons, coupled with those advanced by WCA in its pending Petition for Partial Reconsideration, WCA is in full support of the proposal set forth in the *NPRM* to eliminate the extended period afforded ITFS entities to file petitions to deny against MDS applications.

B. The Commission Should Amend Section 21.902(c) To Provide Certainty As To Which Facilities An Applicant Must Analyze For Potential Interference, Thereby Expediting Processing.

One relatively simple matter where the Commission can simplify its interference protection rules for both applicants and the processing staff, without having a material adverse impact on interference protection, is to simplify the provisions of

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[84]Thus, WCA has petitioned the Commission in General Docket No. 90-54 for reconsideration of the ITFS service rules adopted in the *Reconsideration Order*. *See* WCA Petition for Partial Reconsideration, *supra* note 4, at 16-20.

Section 21.902(c) that delineate which previously proposed stations a MDS applicant must analyze in preparing its application.

At present, an applicant must include an analysis for any previously proposed station where "the proposed transmitting antenna has an unobstructed electrical path to any part of the protected service area of any other station(s)" that has previously proposed to utilize the same or adjacent channels.[85] From informal discussions with the MDS processing staff, WCA understands that this provision occasionally delays application processing because the staff must often secure information from an applicant demonstrating that analysis of a given previously proposed station is not required. In other words, it is not always readily apparent to the staff whether an unobstructed path from a proposed station to the PSA of a previously proposed station exists.

WCA suggests, therefore, that § 21.902(c) be amended to require each applicant to submit interference analyses with respect to any previously proposed co-channel or adjacent channel station located within 100 miles. Even assuming significant verifications in the height of the proposed transmission antenna relative to the previously proposed station's PSA, it is rather inconceivable that one station would cause harmful electrical interference within the PSA of a station located more than 100 miles away. Thus, adoption of WCA's proposal will not increase the potential for electrical interference. While it may require the submission by applicants of more analyses than are currently required, the wireless cable industry would rather submit this information

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[85]*See* 47 C.F.R. §§ 21.902(c)(1) and (2)(1991).

up front, secure in the knowledge that the staff will not then have to delay application processing to clarify whether § 21.902(c) has been complied with.

C. The Commission Should Simplify Its Rules And The MDS Application Form In Order To Avoid Wasting Staff Resources Considering Elements That Do Not Deter Speculation.

In the *NPRM*, the Commission has proposed to amend Sections 21.15(a) and 21.900 of its Rules to permit MDS applicants to self-certify that they are qualified to serve as licensees and that the proposed station site is available.[86] WCA believes that such an approach, coupled with the the adoption of a new, more streamlined application form for MDS authorizations, would be beneficial.

The Commission's experience in the MDS and the Cellular Radio Service, among others, has demonstrated beyond peradventure that requiring applicants to demonstrate their qualifications and financial ability does little to deter speculative filings. As the *NPRM* rightly notes, a certification requirement similar to that proposed in the *NPRM* "is used under Part 94, and has proved as effective as the more onerous requirements contained in [Part 21]."[87]

Beyond that, however, WCA urges the Commission to adopt a new application form, modeled on the FCC Form 402 used to apply for Part 94 authorizations, for use in the MDS. Because FCC Form 494 is utilized for a wide variety of common carrier radio services, it requests a plethora of information of

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[86]*See NPRM, supra* note 1, at ¶ 16.

[87]*Id.*

absolutely no relevance to the Commission's processing of MDS applications. Given the competitive demands of the marketplace, there is no longer any reason for the Commission, for example, to inquire regarding studio facilities and procedures for customers to alert the wireless cable operator of service outages. By adopting a more streamlined application form, the Commission can save its staff the need to review documentation that is of no regulatory import.

D. The Commission Should Adopt Its Proposal To Discontinue The Licensing Of Very Low Power Signal Boosters.

In the *NPRM*, the Commission has sought comment on a proposal to eliminate the individual licensing of signal boosters.[88] Although WCA is concerned about the potential for interference to existing operations from the use of higher power signal boosters, WCA strongly supports the unlicensed use of the low power signal boosters that can currently be installed without prior authorization under Sections 21.913(g) and 74.985(g) of the Commission's Rules.

In WCA's view, it is difficult to square the Commission's decision to permit the installation of these low power devices prior to securing authorization with the extensive amount of paperwork that must be filed after installation is complete. Unfortunately, the Commission has placed so many onerous paperwork requirements on these very low power devices that utilization is minimal. Simply put, the cost of preparing and filing a FCC Form 494 and FCC Form 494A, each with a filing fee, for

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[88] *See NPRM, supra* note 1, at ¶ 12 n.20.

each very low power booster is prohibitive. That, of course, may be a good thing for the Commission; otherwise, the massive paperwork associated with each device that utilizes the same power as a child's walkie-talkie would further add to the application processing backlog.

Therefore, WCA proposes that the rules be amended to eliminate the need for filing any applications in connection with the installation of a very low power booster. Instead, the installer of such a booster should be required to secure a single blanket authorization from the Commission and thereafter prepared and retain in its station file a certification along the lines required by Section 74.985(g) of the Rules for each device it installs.

VII. THE COMMISSION SHOULD COMBINE IN A SINGLE BRANCH THE PROCESSING OF MDS AND ITFS APPLICATIONS AND THE REGULATION OF THE TWO SERVICES.

While WCA is a strong advocate for leaving the existing MDS and ITFS interference protection rules largely untouched, WCA certainly applauds the Commission for soliciting comment as to how to facilitate more rapid processing of MDS applications. For some time now, WCA has been a strong advocate of what has become known as "one stop shopping" -- the combining in a single branch of the processing of MDS and ITFS applications and the regulation of the two services. As a result, WCA is pleased that the *NPRM* has sought public comment on this issue.[89]

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[89] *See NPRM, supra* note 1, at ¶ 9.

Leaving aside the issues related to application processing, WCA believes that there are substantial reasons for the regulation of MDS and ITFS to be united in a single branch. The simple fact is that the wireless cable industry is today by far the single largest benefactor of the ITFS community. While there are certainly some older ITFS stations that are not funded by the leasing of excess capacity, the overwhelming majority of applicants for new ITFS facilities are depending upon wireless cable for financial and operational support. While the Commission attempted in General Docket No. 90-54 to conform its MDS and ITFS regulatory schemes, inter-Bureau turf battles apparently made that goal unreachable. WCA believes that placing regulatory responsibility for both services in a single branch will yield more consistent policymaking, a result that should benefit the wireless cable and educational community alike.

More importantly, considerations involving efficient use of the Commission's staff dictate a merger of MDS and ITFS application processing within a single branch. At present, scarce engineering resources are being wasted because redundant work is being done at the Domestic Radio Branch and the Distribution Facilities Branch as each branch attempts to address "its" applications for a given market. This duplication of effort will undoubtably grow in the future, now that MDS applications can be filed for any of the ITFS channels where educational use is minimal.[90] As a

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[90]*See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private* (continued...)

result, the MDS and ITFS channels are truly intertwined. Thus, the need for inter-Branch coordination will substantially increase, as any ITFS application can now be co-channel or adjacent channel to a MDS facility, and *vice versa*.

Combining the MDS and ITFS processing staffs of the two Branches will also afford management the flexibility to allocate personnel between ITFS and MDS issues as needs arise over time. Because the two services employ very similar technical rules, and because virtually all of the rules governing each service were adopted in proceedings involving the other service, the staff personnel should be able to deftly move between the two services.[91]

Whichever Bureau ultimately governs these services, WCA supports the Commission's proposal to move to the Commission's Gettysburg facility the process of inputting data from each application into a central database, to the extent that the Commission's Gettysburg facility has excess capacity that can be readily employed to rapidly enter the relevant data into a computerized database and thereby expedite the processing of MDS and ITFS applications.

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[90](...continued)
Operational-Fixed Microwave Service, Multichannel Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, 5 FCC Rcd 6792, 6801-06 (1991).

[91]While WCA takes no position as to which Bureau should ultimately regulate the two services, WCA notes that of the three possible Bureaus, the Private Radio Bureau has had the least involvement with the development of the current wireless cable regulatory environment.

However, WCA is opposed to any approach that immediately would move the full processing of applications to Gettysburg. After years of benign neglect by Commission management, both the Domestic Radio Branch and the Distribution Facilities Branch have developed loyal, hard-working and well-trained staff personnel familiar with the MDS and ITFS. While WCA has no doubt that similar expertise could be duplicated in Gettysburg over time, the one thing the wireless cable industry does not have is that time. Presumably, the current corp of ITFS and MDS application processing staff cannot be relocated to Gettysburg rapidly. Therefore, WCA believes that no matter which of the three Bureaus gains jurisdiction, final application processing should remain in Washington and the present MDS and ITFS processing staff members should be reassigned to the responsible Bureau.[92]

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[92]The *NPRM* also inquires as to "whether the MDS has involved in a manner that makes it appropriate for us to reclassify the service as a wholly private radio service." Although WCA is aware of no MDS licensee that today is operating as a true common carrier, WCA believes that there may be some future benefits to permitting MDS licensing to opt for common carrier regulatory status. The Commission should note, however, that bestowing upon MDS licensees the option of operating as a common carrier does not preclude the Commission from assigning regulatory responsibility for the MDS to either the Private Radio Bureau or the Mass Media Bureau. For example, Section 74.931(e)(3) of the Commission's rules affords ITFS licensees the flexibility to make excess capacity available on a common carrier basis. *See* 47 C.F.R. §74.931(e)(3)(1991).

VIII. CONCLUSION

Once again, WCA applauds the Commission for its efforts to address the havoc that has been wrecked upon the wireless cable industry by the mass filing of speculative applications. By adopting the proposals WCA has advanced in its Petition for Rulemaking and above, the Commission can assure that the application mills will no longer flood the Commission with speculative MDS applications.

As WCA hopes it has demonstrated above, there are no simple answers to the existing backlog. Certainly, the making of radical changes to the Commission's ITFS and MDS interference protection system is not an acceptable answer unless the Commission is prepared to throw the wireless baby out with the bathwater. By taking more modest regulatory action, by streamlining the wireless cable regulatory bureaucracy, and by developing a system of prioritizing pending applications so that the applications for facilities most likely to be employed by wireless cable operators gain

priority, the Commission can develop a rational approach to the problem, without jeopardizing the future of wireless cable.

Respectfully submitted,

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EXHIBIT A

CHOOSING ALTERNATIVE TENTATIVE SELECTEES IN MMDS LOTTERIES

In the accompanying Comments, The Wireless Cable Association International, Inc. ("WCA") advances several proposals designed to expedite the licensing of Multipoint Distribution Service ("MDS") facilities. One of the steps proposed by WCA is for the Commission to select a tentative selectee and alternative tentative selectees in each lottery, so that the Commission will not be required to conduct a new lottery every time a tentative selectee's application is dismissed.

During informal discussions with the staff concerning WCA's proposal, only one objection was raised; according to one staff member, it would be necessary to recalculate the lottery interval assigned each applicant between rounds in order to maintain the 2:1 and 1.5:1 minority and diversity preferences afforded under the Commission's MDS lottery rules. In fact, that is not so -- the Commission can choose a tentative selectee and multiple alternates without recalculating intervals and without adversely affecting any applicant's odds of being selected in a given round.

Under the current system, a lottery is conducted as follows: (1) the number of chances claimed by each of the mutually exclusive applicants (*e.g.* 4, 3, 2, 1.5 or 1) is determined; (2) the total number of chances claimed by all of the mutually-exclusive applicants is calculated; (3) each applicant's number of chances is divided by the total number of chances claimed by all of the applicants, and that

number is multiplied by 10,000 to determine the size of the interval assigned the applicant; (4) each of the applicants is assigned a unique interval between 0000 and 9999 so that, when all intervals are assigned, virtually every number between 0000 and 9999 is assigned to an applicant. At the lottery session, four balls numbered 0 through 9 are chosen randomly, yielding a winning four digit number between 0000 and 9999. The applicant assigned to the interval in which that winning number falls is the tentative selectee. On occassion, a few numbers in the upper part of the 0000-9999 range may not be assigned to an applicant because of rounding. In the event the winning lottery number is within that unassigned range, a new lottery is held.

Under WCA's proposal, the same system would be utilized, with one difference. Once the initial tentative selectee is chosen, the Commission would conduct more rounds utilizing the same intervals as it employed in the first round. Just as the Commission does today when the winning number in a MDS lottery is not assigned to any applicant, WCA proposes that if the winning number in the second or any subsequent round be within the lottery interval of an applicant previously chosen, a new number would be selected as the winning number for that round.

To illustrate that this system yields precisely the same odds as if the Commission recalculated the intervals between rounds excluding previous winners, WCA ran a series of computer simulations involving lotteries of various sizes and with applicants claiming a variety of preferences. The following discussion

illustrates the methodology employed by WCA and the results under one of those scenarios. The same results, however, were reached with every scenario employed by WCA -- under WCA's proposal, every applicant has the same chance of winning in the second and subsequent rounds as if lottery intervals were recalculated between rounds.

Assume a lottery involving ten mutually-exclusive applicants, identified as Applicants A through J. Two applicants are entitled to a 4:1 preference, two to a 2:1 preference, three to a 1.5:1 preference and three to no preference. Table I illustrates the size of the interval that would be assigned to each applicant and the odds that each applicant will be chosen as the tentative selectee in the first round. In this table, and in all that follow, the column headed "Interval" shows the size of the interval awarded a given applicant, and is calculated by taking the number of preferences claimed by the applicant, divided by the total of the numbers in the "Preference" column for all applicants, and then multiplied by 10,0000. The column headed "Odds" is calculated for each applicant by dividing the "Interval" for that applicant by the total of the intervals for all of the applicants eligible to win the round in question.

TABLE I -- 1st Round

APPLICANT	PREFERENCE	INTERVAL	ODDS
A	4	2,051	0.2051
B	4	2,051	0.2051
C	2	1,026	0.1026
D	2	1,026	0.1026
E	1.5	769	0.0769
F	1.5	769	0.0769
G	1.5	769	0.0769
H	1	513	0.0513
I	1	513	0.0513
J	1	513	0.0513
TOTALS		10,000	1.0000

Assume than Applicant A won the first lottery. Table II illustrates the intervals and, most importantly, the odds that would be in effect if the intervals were recalculated before a second round was held among the remaining applicants. In calculating the "Interval" and "Odds" for each applicant, the same procedures were utilized as were employed in calculating Table I -- the only difference is that Applicant A is excluded. Thus, despite the elimination of Applicant A from the calculations, the total of the intervals awarded the remaining nine applicants remains 10,000 and the odds that any given applicant will triumph in the second round is its new interval divided by 10,000.

TABLE II --2d Round
(Recalculating Intervals)

APPLICANT	PREFERENCE	INTERVAL	ODDS
B	4	2,581	0.2581
C	2	1,290	0.1290
D	2	1,290	0.1290
E	1.5	968	0.0968
F	1.5	968	0.0968
G	1.5	968	0.0968
H	1	645	0.0645
I	1	645	0.0645
J	1	645	0.0645
TOTALS		10,000	1.0000

Table III is based on the same fundamental assumption as Table II -- that Applicant A won the first round of the lottery. However, Table III reflects WCA's proposed methodology for conducting second and subsequent rounds of a lottery. Unlike the approach that led to Table II, Table III retains the identical intervals for each of the applicants that were employed in the

TABLE III -- 2d Round
(No Recalculation of Intervals)

APPLICANT	PREFERENCE	INTERVAL	ODDS
A	4	2,051	0.0000
B	4	2,051	0.2580
C	2	1,026	0.1291
D	2	1,026	0.1291
E	1.5	769	0.0967
F	1.5	769	0.0967
G	1.5	769	0.0967
H	1	513	0.0645
I	1	513	0.0645
J	1	513	0.0645
TOTALS		7,949	0.9998

initial round. Thus, the "Interval" remains the same for each applicant. Note, however, that the total for that column is 7949 rather than 10,000 -- this reflects the fact that if the winning number falls within the 2051 interval assigned to Applicant A, another winning number will be selected. As a result, the "Odds" for each applicant is calculated by dividing the size of its own interval by the 7949. As a result, the "Odds" for each applicant under Table III are identical (except for insignificant rounding errors) to those set forth in Table II for each applicant.

As this example illustrates, WCA's proposal for choosing alternative tentative selectees is fair to all applicants. It provides the Commission with a much needed mechanism for expediting the introduction of service to the public, without prejudicing any applicant.